

HEALTH AND SENIOR SERVICES

SENIOR SERVICES AND HEALTH SYSTEMS BRANCH

HEALTH FACILITIES EVALUATION AND LICENSING DIVISION

OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE

Readoption with Amendments: N.J.A.C. 8:42

Adopted New Rule: N.J.A.C. 8:42 Appendix

Licensing Standards for Home Health Agencies

Proposed: July 21, 2008 at 40 N.J.R. 4273(a).

Adopted: November 11, 2008 by Heather Howard, Commissioner, Department of Health and Senior Services (with the approval of the Health Care Administration Board).

Filed: December 19, 2008 as R.2009 d.36, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically N.J.S.A. 26:2H-5.

Effective Dates: December 19, 2008, Readoption;

January 20, 2009, Amendments and New Rule.

Expiration Date: December 19, 2013.

Summary of Public Comments and Agency Responses:

The Department of Health and Senior Services (Department) received comments, prior to the close of the 60-day comment period on September 19, 2008, from Sheryl Brand, RN, BSN, President & CEO, Home Care Association of New Jersey, Iselin, New Jersey.

A summary of the comments and the Department's responses follows:

1. COMMENT: The commenter cited N.J.A.C. 8:42-7.3(d)7, which includes the following: "A registered professional nurse who shall be available 24 hours a day, seven days a week, and who shall be required to contact a patient regarding clinical issues within one hour of the patient's call to the agency." The commenter then stated that "clinical issues" might be construed as "scheduling" and should be defined as "those clinically related issues that must be handled by a registered professional nurse and cannot wait until the next business day." The commenter also recommended that the language, "within

one hour of the patient's call" be amended to read "within a reasonable time frame as determined by the registered professional nurse based on the clinical situation."

RESPONSE: The Department chose the term "clinical issues" to specifically differentiate this term from "scheduling" and believes that any staff answering phones would readily understand the distinction and communicate the distinction to anyone calling the agency. The Department also believes that only a registered professional nurse who has spoken to a patient is qualified to determine that a particular clinical issue can wait until the next business day. Thus, the Department does not accept the commenter's proposed definition of "clinical issues." Similarly, the Department does not accept the commenter's proposed amendment to the language, "within one hour of the patient's call." A registered professional nurse could not appropriately determine "a reasonable time frame," which would also need to be defined, "based on the clinical situation" without first speaking to the patient. The Department maintains that the language "within one hour of the patient's call" is accurate and in keeping with the Department's intent.

2. COMMENT: The commenter cited N.J.A.C. 8:42-3.5, which requires agencies to "designate a staff member to coordinate the reporting of child abuse and/or neglect, and that the staff who provide patient care receive training at least annually regarding child abuse, sexual abuse, domestic violence and abuse of an elderly or disabled adult." The commenter then recommended that, while they support the reporting of abuse, they do not believe such reporting should be required to be delegated to one staff member within the agency. Instead, the commenter recommended that an agency should have clear policies and procedures that would identify the child abuse and/or neglect reporting process, as well as responsibilities for all staff.

RESPONSE: According to N.J.A.C. 8:42-3.5, the reporting of abuse is not required to be delegated to one staff member but, rather, one staff member is required to coordinate the reporting of child abuse and/or neglect. Furthermore, the staff who provide patient care are required to receive training at least annually regarding child abuse, sexual abuse, domestic violence and abuse of an elderly or disabled adult. The Department believes that such training would include issues, such as the reporting process and responsibilities for all staff. Therefore, the Department maintains that the current language at N.J.A.C. 8:42-3.5 is also accurate and in keeping with its intent.

Federal Standards Analysis

The rules readopted with amendments and a new rule would impose standards on home health agencies in New Jersey that for the most part do not exceed the Federal Medicare standards for home health agencies at 42 CFR Part 484. However, 42 CFR 484.14 requires that, as a condition of Medicare participation, home health agencies provide part-time or intermittent skilled nursing services, and that at least one other therapeutic service (physical, speech, or occupational therapy; medical social services; or home health aide services) be made available on a visiting basis. Proposed N.J.A.C. 8:42-3.1 requires home health agencies to provide preventive, rehabilitative and therapeutic services, including, but not limited to, nursing, homemaker-home health aide and physical therapy services. Although this requirement exceeds the Federal requirement because it requires both home-maker home health aide and physical therapy services, the

Department believes that these are essential services that should be provided by home health agencies.

The adopted amendment to N.J.A.C. 8:42-7.3(d) requires that a home health agency have an RN available 24 hours a day to return a patient's call regarding clinical issues within one hour. Federal law does not require on-call coverage by an RN and does not require a patient's call to be returned within one hour. In order to ensure that a patient's needs are addressed appropriately and in a timely fashion, the Department believes that a plan for on-call coverage must include a return call from an RN within an hour of a patient's call.

Adopted N.J.A.C. 8:42-3.1(b) imposes a prohibition on full contracting of nursing services, and provides that the subcontracting of nursing services shall only be permitted under certain conditions. Federal law does not limit the subcontracting of nursing services by home health agencies. The Department believes that the subcontracting of nursing services by home health agencies should only be permitted under limited circumstances in order to ensure continuity of care for patients.

The Department is unable to estimate the cost of providing two therapeutic services in addition to nursing services and 24/7 coverage by an RN, or any increase in costs because of the limitation on subcontracting of services. However, the Department believes that patient safety is paramount, and that the costs of these requirements are justified because they serve to ensure patient safety through the provision of high quality care.

The New Jersey Medicaid program was established by State legislation in conformity with the provisions of Title XIX of the Social Security Act, 42 U.S.C. §§1396 et seq., and 42 CFR 400 et seq. Participation in the Federal Medicaid program is a state option; however, once a state has elected this option, the state is required to meet all Federal Title XIX Medicaid requirements in order to qualify for Federal Title XIX (Medicaid) funding. The Federal requirements governing the administration, operation, eligibility and funding for the Medicaid program are contained in Title XIX of the Social Security Act and in Title 42 of the Code of Federal Regulations. Except in limited situations, the Federal statutes and regulations governing the operation of the Medicaid program are general and intended to be guidelines and set minimum standards. The statute and the regulations anticipate that a State Medicaid program will develop its own regulations and statutes to implement the broad guidelines contained in the Federal statute and regulations.

A review of the Federal requirements regarding administration of the Medicaid program, under which home health agencies receive at least a portion of their reimbursement, indicates that there is no readopted rule, which exceeds Federal requirements.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 8:42.

Full text of the adopted amendments and new rule follows:

SUBCHAPTER 1. GENERAL PROVISIONS

8:42-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

"Home health agency" or "agency" means a facility, which is licensed by the Department to provide preventive, rehabilitative, and therapeutic services to patients on a visiting basis in a place of residence used as a patient's home. All home health agencies shall provide at a minimum nursing, homemaker-home health aide, and physical therapy services and are eligible for Medicare-certification.

...

SUBCHAPTER 2. LICENSURE PROCEDURE

8:42-2.1 Certificate of Need

(a) (No change.)

(b) Applications shall provide the information required by N.J.A.C. 8:33 and 8:33L. Application forms for a Certificate of Need (Form CN-3) and instructions for completion are available from the Office of Certificate of Need and Healthcare Facility Licensure through the methods specified in N.J.A.C. 8:33-4.2.

(c) (No change.)

8:42-2.2 Application for licensure

(a) Following acquisition of a Certificate of Need, any person, organization, or corporation desiring to operate a facility shall make application to the Commissioner for a license on forms prescribed by the Department in accordance with the requirements of this chapter. The application and instructions are available through the following methods:

1. Electronically at the Department's "Forms" webpage at <http://nj.gov/health/forms>;
2. Attached as chapter Appendix, which is incorporated herein by reference;
3. Upon written request to:

Director
Office of Certificate of Need and Healthcare Facility Licensure
New Jersey Department of Health and Senior Services
PO Box 358
Trenton, NJ 08625-0358

(b)-(f) (No change.)

8:42-2.3 Surveys

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Office of Health Facilities Assessment and Survey of the Department shall be conducted to determine if the facility adheres to the rules in this chapter.

1. (No change.)

2. The facility shall notify the Office of Certificate of Need and Healthcare Facility Licensure of the Department when the deficiencies, if any, have been corrected, and the Office of Health Facilities Assessment and Survey shall schedule one or more resurveys of the facility prior to issue of license.

(b) No health care facility shall accept patients until the facility has the written approval and/or license issued by the Office of Certificate of Need and Healthcare Facility Licensure of the Department.

(c) (No change.)

8:42-2.5 Surrender of license

The facility shall directly notify each patient, the patient's physician, and any guarantors of payment concerned at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Office of Certificate of Need and Healthcare Facility Licensure of the Department within seven working days after the revocation, non-renewal, or suspension of license.

8:42-2.6 Waiver

(a) (No change.)

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Office of Certificate of Need and Healthcare Facility Licensure of the Department.

(c)-(d) (No change.)

8:42-2.7 Action against a license

Action against a license shall be conducted in accordance with the General Licensure Procedures and Standards Applicable to all Licensed Facilities as set forth in N.J.A.C. 8:43E.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:42-3.2 Ownership

(a) The ownership of the facility shall be disclosed to the Department. Proof of this ownership shall be available in the facility. Any proposed change in ownership shall be reported to the Director of the Office of Certificate of Need and Healthcare Facility Licensure of the Department in writing at least 30 days prior to the change and in conformance with the requirements for Certificate of Need applications.

(b) (No change.)

8:42-3.3 Submission of documents

The facility shall, upon request, submit any documents, which are required by these rules, to the Director of the Office of Certificate of Need and Healthcare Facility Licensure of the Department.

SUBCHAPTER 7. NURSING SERVICES

8:42-7.3 Nursing staff qualifications and responsibilities

(a)-(c) (No change.)

(d) Registered professional nurses and licensed practical nurses shall provide nursing care to patients commensurate with their scope of practice, as delineated in the Nurse Practice Act. Nursing care shall include, but not be limited to, the following:

1.-4. (No change.)

5. Monitoring the patient's response to nursing care;

6. Teaching, supervising and counseling the patient, family members and staff regarding nursing care and the patient's needs, including other related problems of the patient at home. Only a registered professional nurse shall initiate these functions, which may be reinforced by licensed nursing personnel; and

7. A registered professional nurse who shall be available 24 hours a day, seven days a week, and who shall be required to contact a patient regarding clinical issues within one hour of the patient's call to the agency.

(e) (No change.)

SUBCHAPTER 13. PATIENT RIGHTS

8:42-13.1 Policies and procedures

(a) (No change.)

(b) Each patient shall be entitled to the following rights, none of which shall be abridged or violated by the facility or any of its staff:

1.-2. (No change.)

3. To be informed in writing of the following:

i.-iv. (No change.)

v. Notification regarding the filing of complaints with the New Jersey Department of Health and Senior Services 24-hour Complaint Hotline at 1-800-792-9770, or in writing to:

Office of Certificate of Need and Healthcare Facility Licensure
New Jersey Department of Health and Senior Services
PO Box 358
Trenton, New Jersey 08625-0358

Appendix A is available on the internet at <http://www.nj.gov/health/forms/cn-7.pdf>.